

**SALES CONFIRMATION  
TERMS AND CONDITIONS**

**1. *Terms and Conditions of Acceptance.***

The sale by FUJIFILM WAKO DIAGNOSTICS U.S.A. CORPORATION (“SELLER”) to BUYER of the products specified on this sales confirmation (the “Products”) is subject to the terms and conditions of sale set forth on this sales confirmation (“Sales Confirmation”).

**2. *Delivery, Title and Risk of Loss.***

Unless delivery terms are specified on the Sales Confirmation, SELLER shall deliver Products to BUYER, and BUYER shall take delivery of Products, FOB SELLER's facilities and title and risk of loss shall pass to BUYER at that point. The date of delivery shown on the Sales Confirmation is SELLER's best estimate only, and SELLER shall not be liable for any delivery later than that estimated date of delivery. If SELLER is required to pay the freight charges for any shipment, SELLER shall have the right to select the routing and carrier. Any agreement to which this Sales Confirmation applies is an installment contract within the meaning of Section 2612 of the Commercial Code of the State of California. Each shipment shall be considered a separate transaction. If SELLER elects to continue to make shipments notwithstanding any default by BUYER, such action shall not constitute a waiver of any default by BUYER or any provision of this Sales Confirmation.

**3. *Acceptance.***

Acceptance of Products shall occur five (5) business days after delivery unless, within such period, BUYER identifies any shortages, overages, or damages in the Products and so notifies SELLER in writing. Any rejection shall include a full and final statement of all defects on which the BUYER proposes to rely in order to justify such rejection. Any rejection shall be limited to the nonconforming portion of the Products.

**4. *No Changes or Cancellations.***

BUYER shall have no right to change or cancel any portion of its obligation to purchase the Products.

**5. *No Resale of Product.***

BUYER may not resell Products unless a Distributor Agreement is put in place authorizing such resale, together with terms and conditions of any such resale. BUYER may not resell the Products through reseller or sub distributors of any tier unless a Distribution Agreement is effective and authorizes such resale, or unless such resale is authorized in writing by SELLER.

**6. *Prices.***

SELLER reserves the right to adjust its prices at any time (whether before or after delivery or payment) to reflect increases in SELLER's or SELLER's supplier's costs due to changes in laws or regulations (such as changes in customs duties), new charges imposed by any governmental agency. Products



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specified on the Sales Confirmation shall be fixed and unchangeable for any Products delivered within thirty (30) days of the date of SELLER's Sales Confirmation.

### **7. Taxes.**

All sales, use, transfer and similar taxes which, except for federal medical device tax, SELLER may be required to pay or collect with respect to the Products shall be for BUYER's account. SELLER shall invoice BUYER for the amounts thereof at the time of shipment or as soon as they become known to SELLER.

### **8. Payment.**

(a) Terms of payment shall be as specified on the confirmation. SELLER shall invoice BUYER for Products sold hereunder at the time of their delivery. Unless otherwise agreed by SELLER in writing, payment terms shall be NET 30 days from delivery.

(b) SELLER may accept or apply any check or remittance received from or for the account of BUYER against any indebtedness owed by BUYER to SELLER, without prejudice to, or the discharge of, the outstanding balance of any such indebtedness, regardless of any condition, provision, statement, legend or notation appearing on, referring to or accompanying such check or remittance.

### **9. Credit.**

Any credit extended by SELLER to BUYER hereunder is extended at SELLER's sole discretion and SELLER may at any time, with or without cause, declare all outstanding amounts immediately due and payable, require payment in advance for any undelivered Products, or otherwise alter the terms of payment hereunder. If SELLER extends credit terms to BUYER, SELLER shall retain and BUYER hereby grants to SELLER a security interest in all Products, and any proceeds thereof, as security for the payment of any balance owing on the purchase price for said Products or any other sums owing to SELLER under this Sales Confirmation and the resulting contract. In the event BUYER fails to make any payments when due or otherwise fails to perform any of its obligations under this Sales Confirmation and the resulting contract, SELLER shall have all rights and remedies of a secured creditor under the California Commercial Code and/or other applicable law.

### **10. Late Charge.**

BUYER shall pay a late charge to SELLER on all overdue amounts from the due date thereof through the date of payment, at a rate equal to one and one-half percent (1.5%) per month, provided, however, that that rate shall at no time exceed the maximum rate legally allowable under the applicable circumstances. SELLER may apply any payments made by BUYER to SELLER at a time when any such late charge has accrued to such late charge before applying such payments to the purchase price due for any Products.

## 11. *Limited Warranty.*

(a) SELLER warrants that the Products shall conform to the description and such additional specifications, if any, set forth or identified on the confirmation, or otherwise agreed to in a written document prepared by SELLER relating to this specific transaction and that the Products have at least 90 days of shelf-life at the time of shipping. This warranty shall apply for 15 days from the time of delivery, unless a different period is set forth on the Sales Confirmation or in additional specifications referred to on the Sales Confirmation. SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. No warranty shall be created by any sample of the Products which may have been provided to BUYER. Without limiting the generality of the foregoing, SELLER has provided no warranty as to the suitability of the Products for the use intended by BUYER including without limitation, any use of the Products in connection with any other product. BUYER confirms that it is solely responsible for making such suitability determination. If resale is authorized by SELLER in writing, BUYER shall be responsible for ensuring that the terms of any such authorized Product resale will at all times be consistent with the exclusions, limitations and disclaimers of obligations, warranties and liabilities specified herein."

(b) The warranty set forth in Paragraph 10(a) shall not apply to any nonconformity resulting from any storage or use of the Products following delivery to BUYER which is not in accordance with SELLER's instructions or standards (including temperature or other environmental requirements) or the labeling on the Products, or that is otherwise improper.

(c) If BUYER discovers that any Product fails to conform to the warranty set forth in Paragraph 10(a), BUYER shall notify SELLER in writing. Such notice must be given within three (3) business days of the date when BUYER discovers or should have discovered such alleged nonconformity, and in any case must be given within three (3) business days following the end of the warranty period set forth in Paragraph 10(a). Such notice shall provide full details of such alleged nonconformity. BUYER shall additionally respond fully to any SELLER requests for further information concerning such alleged nonconformity and the manner in which the subject Product has been stored and used following delivery and, if requested by SELLER, shall return all or any part of the subject Product to a United States destination designated by SELLER. Upon confirming that a nonconformity exists and is covered by SELLER's warranty hereunder, SELLER shall, at SELLER's option, either replace any Product which SELLER determines not to conform to that warranty or credit BUYER with the purchase price attributable to that Product. BUYER shall prepay the shipping and other related charges for all such Products returned to SELLER after prior return authorization, and SELLER shall pay for the shipping and other related charges for any replacement Products delivered to BUYER. The remedy set forth in Paragraph 10(c) shall constitute BUYER's sole remedy for any breach of warranty. If BUYER shall fail to comply strictly with the procedures set forth therein, BUYER shall be barred from any remedy with respect to the affected Products.

## 12. *Intellectual Property Infringement.*

(a) WITH RESPECT TO ANY PRODUCTS SOLD BY SELLER TO BUYER, SELLER DISCLAIMS ALL WARRANTIES OR OTHER LIABILITY, AND SHALL PROVIDE NO

WARRANTY OR INDEMNITY WHATSOEVER, FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT, OR ANY ACTUAL OR ALLEGED MISAPPROPRIATION OF ANY TRADE SECRET.

(b) If SELLER procures or produces any Product to BUYER's specifications, BUYER shall indemnify, defend and hold harmless SELLER and SELLER's suppliers from any claim asserting that the sale of that Product infringes any patent, copyright or other intellectual property right, and from any resulting or related loss, damage or liability.

### **13. *Limitation of Liability.***

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY LOST PROFITS OR OTHER INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE AGGREGATE LIABILITY OF SELLER TO BUYER FOR ANY CLAIMS WHATSOEVER ARISING OUT OF OR RELATING TO THIS SALES CONFIRMATION OR THE TRANSACTIONS BETWEEN BUYER AND SELLER COVERED HEREBY, SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY BUYER TO SELLER HEREUNDER.

(b) Each limitation on liability or limited or exclusive remedy set forth in this Sales Confirmation is independent of any other limitation or remedy and if any such limitation or remedy fails of its essential purpose or is otherwise held to be unenforceable, that shall not affect the validity of any other such limitation or remedy.

### **14. *BUYER Default.***

If BUYER fails to make any payment or to perform any other obligation hereunder when due, SELLER may, in addition to any other remedies which SELLER may have hereunder or under applicable law, upon notice to BUYER, suspend SELLER's performance hereunder and under any other agreements with BUYER, or terminate any unperformed portion of this Sales Confirmation or any other such agreements, in which case BUYER shall be deemed to have repudiated this Sales Confirmation and any other such terminated agreements.

### **15. *Contingencies.***

(a) SELLER shall not be responsible for any delay in performing or failure to perform hereunder due to any cause beyond SELLER's reasonable control affecting SELLER or SELLER's suppliers, including, without limitation, acts of God, war, riots or other civil commotion, embargoes, governmental laws, regulations or orders, fires, floods, earthquakes, strikes, lockouts or other labor difficulties, or failure of suppliers to perform, whether or not such cause or event was in the contemplation of the parties at time the parties entered into this Sales Confirmation and the resulting contract. If such cause occurs and affects only a portion of SELLER's performance, SELLER may, at its option, perform to the extent that it is able to, and BUYER shall accept that performance. If SELLER's performance is affected for more than

ninety (90) days, SELLER may then, at its option, terminate the unperformed balance of this Sales Confirmation without further liability to BUYER.

(b) In addition to causes covered by paragraph 14(a), other circumstances may arise which may result in SELLER having insufficient quantities of Products from its inventory and then contemplated sources of supply to meet the full requirements of all of SELLER's customers, contract or otherwise. Whenever such situation exists and SELLER's performance hereunder is not otherwise excused, SELLER may reduce deliveries of such Products on any basis which in SELLER's opinion is equitable, allowing for such priorities to such customers as SELLER deems appropriate. SELLER shall not be required to make up any such reduction later, although SELLER may do so if such Products subsequently become available and SELLER notifies BUYER of SELLER's intention to make up such shortfall. BUYER shall be obligated to accept any such reduced amount.

## **16. *Independent Contractors.***

The relationship of SELLER and BUYER established hereunder is that of independent contractors, and nothing contained herein shall be construed to (i) give either party the power to direct or control the day-to-day activities of the other, (ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or (iii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. All financial obligations associated with BUYER's business are the sole responsibility of BUYER. All sales and other agreements between BUYER and its purchasers are BUYER's exclusive responsibility and shall have no effect on BUYER's obligations hereunder. BUYER shall be solely responsible for the acts of BUYER and its employees and agents. SELLER has no obligation whatsoever to insure any interests of BUYER or to make BUYER an additional insured or beneficiary under SELLER's own insurance.

## **17. *Entire Agreement; Modifications; Waivers.***

(a) This Sales Confirmation (including any materials expressly referred to herein) constitutes the sole and entire agreement between the parties hereto concerning the subject matter hereof and supersedes all previous negotiations, purchase orders, agreements, warranties and other communications, oral or written, related thereto.

(b) Neither this Sales Confirmation nor any rights hereunder shall be released or modified in any manner, except by a written document signed by duly authorized representatives of each of the parties.

(c) Any delay or failure by either party to enforce at any time any of its rights hereunder shall not be deemed to be a waiver of that party's right thereafter to enforce those rights or a waiver of such provision or of that party's right to resort to any remedy available to it. A waiver on one occasion shall not be construed as a waiver of any right on any future occasion.

## **18. *Assignment.***

BUYER shall not assign or delegate any of its rights or obligations hereunder, whether voluntarily or by operation of law, and any such purported assignment or delegation shall be void and without effect.



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**19. Severability.**

If any part of this Sales Confirmation is held to be prohibited or invalid under applicable law, then such part shall be ineffective to the extent of such prohibition or invalidity, without affecting the remainder of this Sales Confirmation.

**20. Proprietary Information.**

(a) SELLER may, from time to time, convey proprietary and confidential information to BUYER in connection with this transaction. BUYER shall use that information only in connection with its performance under or related-to this transaction and shall protect that information from disclosure to others with at least the same degree of care as that which is accorded to its own proprietary information, but in no event with less than reasonable care. Information will not be subject to this provision if it is or becomes a matter of public knowledge without the fault of BUYER or if it was or is received by BUYER from a third person under circumstances permitting its disclosure. Upon SELLER's request, BUYER shall cease all further use of such information and shall destroy all materials in its possession containing such information.

(b) BUYER agrees that SELLER retains proprietary rights in and to all product specifications, designs, engineering details, discoveries, inventions, patents, copyrights, trademarks, trade secrets and other proprietary rights relating to the Products (other than software marketed by SELLER under a licensing agreement with its owner or permitted licensor). The Products are offered for sale and are sold by SELLER subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, to manufacture, duplicate or otherwise copy or reproduce any of the Products.

**21. Governing Law.**

This Sales Confirmation and the resulting contract between BUYER and SELLER shall be governed by and construed in accordance with the laws of the State of California, without application of any choice of law rules or the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

**22. Dispute Resolution.**

(a) Any claim or dispute arising out of this Sales Confirmation between SELLER and BUYER shall be submitted to final and binding arbitration in Santa Clara County, California in accordance with the Commercial Rules of the American Arbitration Association.

(b) If any action or proceeding is commenced which arises out of or relates to this Sales Confirmation, or the transactions between BUYER and SELLER covered hereby, the prevailing party in such action or proceeding shall be entitled to recover from the other party the reasonable attorneys' fees, costs and expenses incurred by such prevailing party in connection with such action or proceeding and in enforcing any award or judgment thereby obtained.



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(c) No action for breach of this Sales Confirmation may be brought by BUYER against SELLER more than one (1) year after the cause of action accrues.

**23. *Compliance with Law.***

BUYER shall use the Products in strict compliance with all and any applicable laws including any applicable regulations issued by the US Food and Drug Administration ("FDA"). If BUYER has been authorized in writing by SELLER to resell the Product, BUYER shall use best efforts to cause purchasers of the Products from BUYER to use the Products in strict compliance with all and any applicable laws including, without limitation, any applicable such regulations.

**24. *Buyer Cooperation***

BUYER acknowledges that SELLER has certain reporting and other obligations to applicable regulatory authorities, including, without limitation, FDA (collectively, "Regulatory Authorities"). BUYER shall fully cooperate with SELLER and provide any reports or information as may be requested by SELLER regarding the Products. Without limiting the generality of the foregoing or any other obligations hereunder, BUYER shall immediately notify SELLER upon its receipt of any customer or consumer complaint of any adverse event or injury or upon its receipt of any inquiry from a Regulatory Authority regarding the Products. BUYER also shall fully cooperate with SELLER in the event of any inspection by a Regulatory Authority or in the event of a Product recall.